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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Frank S. Glaug

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EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/568,790	Applicant(s) GLAUG ET AL.	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,6-10,16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,6-10,16 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 January 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

Drawings

1. The drawings were received on 11-14-08. These drawings are not approved. Not only are the replacement drawings of poor quality, e.g. lines and numbers faint, but they do not overcome all the objections, see paragraph 2 *infra*, still not consistent.

2. The drawings are objected to because Figure 1 should be labeled "PRIOR ART", see page 3, lines 7-8. The Figures are not consistent with the description thereof, i.e. show exploded partial cross sections but not described as such. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Description

3. The abstract of the disclosure is objected to because the abstract, i.e. a replacement paragraph of the PCT abstract, is still not a clean copy. A clean copy, i.e. a separate page with just the abstract on it, must be filed prior to allowance, if any. Correction is required. See MPEP § 608.01(b).

Claim Language Interpretation

4. The claim language is interpreted in light of the definitions at page 4, lines 5-8 and 32-35 (note with regard to the latter that it refers to a core). Any terminology which is not explicitly defined will be interpreted in light of its usual, e.g. dictionary, definition. Claims 10 and 16 are product by process claims, see MPEP 2113, i.e. “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted)”. However, note page 6, lines 6-8 with regard to the end product of such product by process claims. With regard to claims 3, and 8, see page 8, lines 1-5 of the instant application.

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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6. Claims 1, 3, 6-10, and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Trokhan et al '747 (and thereby, by incorporation Trokhan '480 and Osborn III '264).

Claim 1: See Claim Language Interpretation section supra, hereinafter referred to as CLI, and, e.g., '747 at col. 11, lines 9-30 (and thereby '264 by incorporation at the Figures and col. 2, lines 47 et seq and the paragraph bridging cols. 8-9 and the last full paragraph of col. 9), '747 at the Figures, col. 1, lines 12-17, col. 2, lines 23-34, col. 3, lines 41-62, col. 4, lines 5-12, col. 4, lines 28-40 (and thereby '480, by incorporation, at the Figures, col. 2, line 18-21, col. 3, lines 40-63, col. 18, lines 34-36, col. 19, lines 1-13, and col. 21, lines 21-24) '747 at col. 4, line 45-col. 9, line 28, i.e. '747 teaches an absorbent article, col. 11, lines 9-30 and thereby '264, comprising a barrier layer 16 in '264, a cover layer 25 in '264 extending substantially parallel to the barrier layer, and an osmotic absorbent polymer 24 interposed between the cover layer and the barrier layer, the absorbent polymer being adhered to the article in a pattern, see Figures and cited portions of '747 and '264, configured to distribute fluid in the absorbent article, see, e.g., col. 2, lines 24-34 of '747, wherein at least one portion of the absorbent article extending essentially completely across the absorbent article is substantially devoid of the absorbent polymer, see 34 in Figures of '747 and 83 in Figures of '480. Claim 1 requires the absorbent polymer be a superabsorbent polymer, see, e.g., page 4, lines 5-16 and page 6, line 5-page 7, line 5 of the instant application. See also the cited portions of '747. Therefore, the absorbent polymer 24 of '747 is a "superabsorbent polymer" as claimed, or since the absorbent polymer of '747 includes the same structure and functions in the same manner as the absorbent polymer considered a "superabsorbent polymer" as disclosed, there is sufficient factual evidence for one to conclude

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that such absorbent polymer also inherently includes the function, capability or property claimed of such, i.e. performs as a “superabsorbent polymer”, see MPEP 2112.01.

Claim 1 also now requires a core, 20 of ‘747, see col. 11, lines 20-21, be interposed between the cover layer and the barrier layer, see discussion supra, and the “superabsorbent polymer”, see discussion supra, be applied to the core or the barrier layer in the pattern, e.g. see the Figures and cited portions of ‘747 and ‘480. Finally claim 1 now requires the core be selected from the group consisting of tissue and paper towel sheet, see col. 4, lines 37-38 of ‘747 and, e.g., ‘480 at col. 2, lines 17-22, col. 18, lines 34-35 and col. 21, lines 21-24.

Claim 3: This claim requires the pattern be configured to increase resistance of the absorbent article to tearing with the at least one portion of the absorbent article extending essentially completely across the absorbent article being more resistant to tearing than at least one other portion of the absorbent article, i.e. capabilities, functions or properties of the pattern. See, CLI, e.g. page 8, lines 1-5 of the instant application. Since ‘747 teaches the claimed pattern as well as such functioning similarly to that disclosed at page 8, lines 1-5 of the instant application, at the very least, there is sufficient factual evidence for one to conclude that such pattern also inherently includes the function, capability or property claimed of such, i.e. increased resistance to tearing, see MPEP 2112.01.

Claim 6: The barrier layer comprises a material selected from the group consisting of polyethylene, polypropylene, copolymers of polyethylene and polypropylene, polyester, and bi-component fibers, see last paragraph of col. 9 of ‘264.

Claim 7: The cover layer comprises one or both of a non-woven material and an apertured film, see paragraph bridging cols. 8-9 of ‘264.

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Claim 8: The pattern forms at least one region including the superabsorbent polymer and at least one continuous zone that is substantially devoid of the superabsorbent polymer, the continuous zone having greater tear resistance than the region including the superabsorbent polymer, see discussion of claim 3 *supra*.

Claim 9: The pattern is selected from the group consisting of a spiral pattern, a melt blown pattern, a multi-tracked pattern, a full coat pattern, a zoned spray pattern, and an intermittent pattern, see Figures of '480 and 747 and the cited portions thereof, e.g. an intermittent pattern.

Claim 10: The superabsorbent polymer is formed from one or more of a polymer in liquid form and a polymer formed by conversion of a superabsorbent precursor, the superabsorbent precursor comprising one or both of a monomer and an oligomer, see CLI, discussion of claims *supra* and '747 at col. 4, line 46-col. 9, line 29, e.g. the end product of '747 includes a superabsorbent polymer adhered thereto and/or the superabsorbent polymer is formed from a polymer in liquid form or formed by conversion of a precursor comprising one or both of a monomer and an oligomer.

Claims 16-17: See claim 1 and the CLI *supra*.

Response to Arguments

7. Applicant's remarks have been carefully considered but are either deemed moot in that the issue discussed has not been repeated or deemed not persuasive for the reasons set forth *supra*.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Lang '918 patent also teaches an absorbent article with patterned superabsorbent.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to claims 1 and 16, the cancellation of claims 2, 4-5 and 11-15 and the addition of claim 17.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Karin M. Reichle/
Primary Examiner, Art Unit 3761

February 5, 2009